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Y.F., Appellant)	
)	
and)	Docket No. 19-1576
)	Issued: August 4, 2020
U.S. POSTAL SERVICE, JAMES C. BROWN,)	
JR. POST OFFICE, Las Vegas, NV, Employer)	
)	

Case Submitted on the Record

Office of Solicitor, for the Director

Before:
CHRISTOPHER J. GODFREY, Deputy Chief Judge
JANICE B. ASKIN, Judge
PATRICIA H. FITZGERALD, Alternate Judge

On July 18, 2019 appellant, through counsel, filed a timely appeal from an April 29, 2019 merit decision of the Office of Workers' Compensation Programs (OWCP).² Pursuant to the

¹ In all cases in which a representative has been authorized in a matter before the Board, no claim for a fee for legal or other service performed on appeal before the Board is valid unless approved by the Board. 20 C.F.R. § 501.9(e). No contract for a stipulated fee or on a contingent fee basis will be approved by the Board. *Id.* An attorney or representative's collection of a fee without the Board's approval may constitute a misdemeanor, subject to fine or imprisonment for up to one year or both. *Id.*; *see also* 18 U.S.C. § 292. Demands for payment of fees to a representative, prior to approval by the Board, may be reported to appropriate authorities for investigation.

² The Board notes that, following the April 29, 2019 decision, OWCP received additional evidence. However, the Board’s *Rules of Procedure* provides: “The Board’s review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal.” 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this evidence for the first time on appeal. *Id.*

Federal Employees' Compensation Act³ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether appellant has met her burden of proof to expand the acceptance of her claim to include dysarthria causally related to her October 22, 2011 employment injury.

FACTUAL HISTORY

On October 22, 2011 appellant, then a 47-year-old mail handler, filed a traumatic injury claim (Form CA-1) alleging that on that date she injured her head, face, neck, and ears when the top shelf of a cage struck the top of her head while she was in the performance of duty. OWCP accepted the claim for a contusion of the face, scalp, and neck. It subsequently expanded acceptance of the claim to include neck sprain and a temporary aggravation of cervical intervertebral disc disease with myelopathy. Appellant sustained intermittent periods of disability from employment from December 5, 2011 and OWCP initially paid her wage-loss compensation on the supplemental rolls. She received compensation on the periodic rolls as of August 26, 2012.

By decision dated February 14, 2013, OWCP reduced appellant's wage-loss compensation based on her failure, without good cause, to participate in vocational rehabilitation. It found that if she had participated in vocational rehabilitation she would have been able to perform the duties of a customer service representative.

On April 18, 2016 appellant returned to limited-duty work as a modified mail handler at the employing establishment for six hours per day. OWCP paid her wage-loss compensation for two hours per day.

On November 7, 2017 appellant filed a wage-loss compensation claim (Form CA-7) from August 23 to October 23, 2017. An attached time analysis form (Form CA-7a) indicated that she had requested leave without pay for eight hours per day beginning September 2, 2017.

On November 21, 2017 Dr. Nouhad Damaj, a Board-certified internist, indicated that appellant had experienced "chronic severe neck pain, headaches, and tingling sensations ever since [appellant's] accident at work on October 22, 2011." He advised that she had received a late diagnosis of dysarthria due to her October 22, 2011 employment injury. Dr. Damaj found that appellant was unable to work from August 31, 2017 until January 2, 2018.

On December 6, 2017 counsel requested that OWCP expand acceptance of appellant's claim to include dysarthria.

In a January 18, 2018 duty status report (Form CA-17), Dr. Damaj diagnosed dysarthria and cervical spine degeneration. He found that appellant was disabled from work.

³ 5 U.S.C. § 8101 *et seq.*

The employing establishment on February 14, 2018 advised that appellant had stopped work on September 2, 2017.

In a development letter dated February 14, 2018, OWCP noted that it had received appellant's request for wage-loss compensation beginning October 25, 2017 and her request to expand acceptance of her claim to include an additional condition contributing to her disability. It advised that it was not going to take action on CA-7 forms until it had adjudicated the issue of claim expansion.

In a separate letter of the same date, OWCP requested that appellant submit additional evidence supporting that she had sustained a recurrence of disability beginning September 2, 2017, including an opinion addressing the causal relationship between her current condition and the accepted employment injury. It afforded her 30 days to submit the requested information.

Appellant, in a February 21, 2018 response to OWCP's development letter, advised that at the end of May 2017 she had lost the ability to verbally communicate. Since that time, she had experienced periodic disability from work due to her slurred speech and confusion. Appellant attributed her dysarthria to the blow to her head on October 22, 2011.

In a February 21, 2018 report, Dr. Damaj noted that appellant had a history of dizziness, headaches, neck pain, back pain, leg weakness, and difficulty walking. He diagnosed headaches, concussion, cervical and lumbosacral degenerative disc disease, neuropathy, dysarthria, lupus, fibromyalgia, anxiety, and depression. Dr. Damaj attributed all of appellant's symptoms to her October 22, 2011 employment injury and opined that she was totally disabled.

On February 22, 2018 counsel asserted that appellant had missed time from work due to her accepted conditions rather than dysarthria and requested that she be paid compensation for total disability from work.

In an April 23, 2018 response to OWCP's development letter, appellant noted that, in July 2017, the employing establishment moved her to a new location, which caused migraines, pain, and dysarthria.

On April 23, 2018 Dr. Damaj provided the same diagnoses as in his prior report and again found that appellant's symptoms were due to her October 22, 2011 employment injury. He advised that she had progressive and worsening symptoms of headaches, memory loss, dysarthria, neuropathy, lupus, and fibromyalgia that were impacting her ability to function.

On May 22, 2018 OWCP referred appellant to Dr. Gary J. La Tourette, a Board-certified orthopedic surgeon, to determine whether she had further residuals or disability causally related to her accepted employment injury.

In a report dated August 13, 2018, Dr. La Tourette provided as orthopedic diagnoses cervicalgia and cervical sprain/strain. He noted that the records did not indicate the weight of the object that had struck appellant in the head. Dr. La Tourette advised that her subjective complaints were unsupported by objective findings. He recommended a neurological evaluation.

On September 19, 2018 OWCP provided Dr. Damaj with a copy of Dr. La Tourette's report and authorized an evaluation with a neurologist. It advised that he should contact OWCP within 15 days if he was unable to arrange for an evaluation so that one could be scheduled. OWCP requested that Dr. Damaj provided copies of any prior neurological evaluations.

The employing establishment on September 21, 2018 specified that the mail container that had struck appellant weighed 230 pounds empty and had a maximum capacity of 1,200 pounds.

By decision dated September 27, 2018, OWCP denied appellant's request to expand acceptance of her claim to include the additional condition of dysarthria causally related to her employment injury. It found that she had not submitted reasoned medical evidence establishing that the diagnosed condition was due to her October 22, 2011 employment injury.

On October 22, 2018 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

Thereafter, OWCP received an April 1, 2016 progress report from Dr. Jay Mahajan, an osteopath and Board-certified neurologist. Dr. Mahajan noted that he had last evaluated appellant on June 30, 2015 for complicated migraines. He diagnosed cervicalgia, complicated migraine, fibromyalgia, dysesthesia, ataxia, lupus, hemiparesis, and chronic migraine.

On May 28, 2017 Dr. Mahajan evaluated appellant at the hospital. He obtained a history of her waking up complaining of "difficulty with speech, severe headache, and left arm and leg weakness." Dr. Mahajan noted that a computerized tomography scan of the brain was normal. Appellant's symptoms improved such that she could whisper words. Dr. Mahajan diagnosed dysarthria, left hemiparesis, intractable migraine, malignant hypertension, encephalopathy seizure versus hypertensive etiology, cervicalgia, gait ataxia, fibromyalgia, and lupus. He provided the same diagnoses in a May 30, 2017 report.

A May 29, 2017 magnetic resonance angiography (MRA) of appellant's head yielded normal results. A magnetic resonance imaging (MRI) scan of the brain obtained on the same date also yielded normal findings.

In the last page of June 12, 2017 discharge summary, Dr. Zongqi Yang, an internist, noted that appellant had awakened unable to speak after experiencing a headache for two days. He noted that objective tests obtained in the hospital were normal and that she had recovered her ability to speak with time.

In a report dated December 13, 2018, Dr. Mahajan discussed appellant's history of losing her voice and stuttering when it returned. He diagnosed migraines, carpal tunnel syndrome, dysesthesia, fibromyalgia, lupus, a skin sensation disturbance, hemiparesis, paresthesia, neuropathy, and speech abnormality.

A telephonic hearing was held on February 13, 2019. Appellant advised that she had stopped work after the employing establishment sent her home because she refused to sign a new job offer. She alleged that her manager screamed at her when she wanted to take the offer to her physician and she began stuttering due to her dysarthria. Appellant indicated that she had stopped work in July or August 2017.

By decision dated April 29, 2019, OWCP's hearing representative affirmed the September 27, 2018 decision. She found that appellant had not submitted medical evidence sufficient to establish that appellant's claim should be expanded to include the condition of dysarthria and that she had, thus, failed to establish entitlement to wage loss for any disability due to that condition. The hearing representative noted that OWCP had not adjudicated appellant's claims for compensation for intermittent disability beginning in July 2017 and from August 25, 2017 and continuing. She instructed OWCP, upon return of the case record, to consider whether appellant had established disability due to her accepted employment injury for any of the claimed periods.

LEGAL PRECEDENT

When an employee claims that a condition not accepted or approved by OWCP was due to an employment injury, he or she bears the burden of proof to establish that the condition is causally related to the employment injury.⁴

Causal relationship is a medical question that requires medical opinion evidence to resolve the issue.⁵ The opinion of the physician must be based on a complete factual and medical background, must be one of reasonable certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the accepted employment injury.⁶

ANALYSIS

The Board finds that appellant has not met her burden of proof to expand the acceptance of her claim to include dysarthria causally related to her October 22, 2011 employment injury.

In support of her request for claim expansion, appellant submitted a February 21, 2018 report from Dr. Damaj, who discussed her history of dizziness, pain in her back and neck, headaches, and leg weakness. Dr. Damaj diagnosed headaches, brain concussion, cervical and lumbosacral degenerative disc disease, neuropathy, dysarthria, lupus, fibromyalgia, anxiety, and depression. He advised that appellant's symptoms resulted from her October 22, 2011 employment injury and found that she was totally disabled. While Dr. Damaj provided a conclusory opinion on causal relationship, he did not explain how the accepted employment injury caused or aggravated dysarthria. The Board has held that a report is of limited probative value regarding causal relationship if it does not contain medical rationale explaining how a given medical condition is causally related to employment factors.⁷ This report is therefore insufficient to establish claim expansion.

⁴ *K.T.*, Docket No. 19-1718 (issued April 7, 2020); *Jaja K. Asaramo*, 55 ECAB 200 (2004).

⁵ *E.M.*, Docket No. 18-1599 (issued March 7, 2019); *Robert G. Morris*, 48 ECAB 238 (1996).

⁶ *Id.*

⁷ *A.T.*, Docket No. 19-1608 (issued April 21, 2020); *A.L.*, Docket No. 18-1706 (issued May 20, 2019).

On April 23, 2018 Dr. Damaj indicated that appellant's headaches, memory loss, dysarthria, neuropathy, lupus, and fibromyalgia were progressing, decreasing her ability to function. He attributed her symptoms to the October 22, 2011 employment injury. Dr. Damaj diagnosed headaches, brain concussion, cervical and lumbosacral degenerative disc, neuropathy, dysarthria, lupus, fibromyalgia, anxiety, and depression. While he opined that appellant's symptoms of dysarthria were related to her employment injury, he failed to provide a history of injury or explain how the mechanism of injury would have physiologically caused or aggravated the diagnosed conditions. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no probative value on the issue of causal relationship.⁸ Dr. Damaj's report, therefore, is insufficient to establish expansion of the acceptance of her claim.

On November 21, 2017 Dr. Damaj noted that appellant had experienced headaches, neck pain, and tingling sensations after a work accident on October 22, 2011. He indicated that she had also been given a late diagnosis of dysarthria as a result of her October 22, 2011 employment injury. Dr. Damaj opined that appellant was disabled from employment for the period August 31, 2017 through January 2, 2018. While Dr. Damaj noted that she had received a diagnosis of dysarthria due to her accepted employment injury, he did provide an independent causation finding and, thus, his report is of little probative value.⁹ Additionally, Dr. Damaj failed to provide any rationale explaining how the additional diagnosis of dysarthria was causally related to the accepted employment injury.¹⁰ Consequently, his report is insufficient to meet appellant's burden of proof.

The remaining reports fail to address causation. In a progress report dated April 1, 2016, Dr. Mahajan noted that he had treated appellant for migraines in 2015. He diagnosed cervicgia, complicated migraine, fibromyalgia, dysesthesia, ataxia, lupus, hemiparesis, and chronic migraine. In May 28 and 30, 2017 hospital reports, Dr. Mahajan diagnosed dysarthria, left hemiparesis, intractable migraine, malignant hypertension, encephalopathy seizure versus hypertensive etiology, cervicgia, gait ataxia, fibromyalgia, and lupus. He obtained a history of appellant waking up with a severe headache and problems communicating. In a discharge summary dated June 12, 2017, Dr. Yang noted that objective tests performed at the hospital had yielded normal findings. On December 13, 2018 Dr. Mahajan reviewed appellant's history of losing her voice and difficulty talking. His diagnoses included a speech abnormality. In a Form CA-17 report, Dr. Damaj diagnosed dysarthria and degeneration of the cervical spine. None of the physicians in these reports addressed the cause of the diagnosed dysarthria. The Board has held that medical evidence that does not offer an opinion regarding the cause of an employee's condition is of no

⁸ *K.T.*, *supra* note 4; *G.M.*, Docket No. 19-0933 (issued October 1, 2019); *L.B.*, Docket No. 18-0533 (issued August 27, 2018); *D.K.*, Docket No. 17-1549 (issued July 6, 2018).

⁹ *K.B.*, Docket No. 17-0682 (issued July 24, 2017).

¹⁰ *M.S.*, Docket No. 17-0105 (issued December 7, 2017).

probative value on the issue of causal relationship.¹¹ Therefore, this evidence is insufficient to meet appellant's burden of proof.¹²

Dr. La Tourette provided a second opinion examination regarding whether appellant had residuals or disability due to her October 22, 2011 employment injury, accepted for a contusion of the face, scalp, and neck, neck sprain, and a temporary aggravation of cervical intervertebral disc disease with myelopathy. He did not address the question of claim expansion and, thus, his opinion is not probative on this issue.¹³

Appellant further submitted the results of diagnostic testing, including MRA and MRI scans of the brain and head. Diagnostic studies, standing alone, lack probative value on the issue of causal relationship as they do not address whether the employment injury caused a diagnosed condition.¹⁴ Therefore, these reports are also insufficient to establish appellant's claim.

The Board finds that appellant has not submitted sufficient rationalized medical evidence sufficient to establish causal relationship between the accepted October 22, 2011 employment injury and the claimed additional condition of dysarthria. As such, appellant has not met her burden of proof to expand acceptance of her claim.¹⁵

On appeal counsel contends that OWCP failed to apply the appropriate standard of causation or give sufficient deference to the findings of appellant's attending physician. As discussed, however, she has not submitted a reasoned opinion sufficient to show that her diagnosed condition of dysarthria was causally related to her accepted employment injury.¹⁶

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that appellant has not met her burden of proof to expand acceptance of her claim to include dysarthria causally related to her October 22, 2011 employment injury.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *O.M.*, Docket No. 18-1055 (issued April 15, 2020).

¹⁵ *K.T.*, *supra* note 4.

¹⁶ *See S.O.*, Docket No. 19-0307 (issued June 18, 2019).

ORDER

IT IS HEREBY ORDERED THAT the April 29, 2019 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: August 4, 2020
Washington, DC

Christopher J. Godfrey, Deputy Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge
Employees' Compensation Appeals Board